STATE OF NORTH CAROLINA

2011 JAM 10 AM 10: 13 SUPERIOR COURT OF JUSTICE

WAKE COUNTY

FILE NO.: 10 CVS 20999

THE NORTH CAROLINA STATE BAR,

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Petitioner

v.

CONSENT ORDER OF PRELIMINARY INJUNCTION

J. NEAL RODGERS, Attorney,

Respondent

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County pursuant to a motion for temporary restraining order and petition for preliminary injunction filed by the North Carolina State Bar. Petitioner was represented by Leanor Bailey Hodge. Respondent, J. Neal Rodgers was represented by Alan M. Schneider. Based upon the consent of the parties, the Court makes the following:

## FINDINGS OF FACT

- 1. Respondent, J. Neal Rodgers ("Rodgers"), was licensed to practice law in North Carolina in 1994.
- 2. Rodgers practices law in Charlotte, North Carolina. The North Carolina State Bar's ("State Bar") membership database shows the following address for Rodgers: 901 Central Avenue, Charlotte, NC 28204.
- 3. Rodgers maintained two trust accounts: Wachovia Bank trust account ending in no. 1778 ("1778 Account") and Wachovia Bank trust account ending in 2225 ("2225 Account").
- 4. The State Bar conducted an analysis of Rodgers' trust accounts after a client complained of Rodgers' failure to fully refund a cash deposit and another client complained of Rodgers' failure to refund an unearned fee.
- 5. The State Bar's analysis shows that Rodgers mishandled entrusted client funds in the 2225 Account in that:
  - a. On or about 30 April 2008, \$3,816 was transferred from the 2225 Account as overdraft protection to cover a shortage in Rodgers' firm operating account;

- b. From 23 May 2008 through 27 May 2008, Rodgers had less money in the 2225 Account than that which he was supposed to be holding on behalf of clients though his trust account did not show a negative balance;
- c. On or about 3 June 2008, Rodgers withdrew \$4,000 from the 2225 Account without identifying the client on whose behalf the funds were withdrawn; Rodgers was unable to explain this withdrawal or to show that he was entitled to these funds;
- d. From 3 June 2008 through 26 June 2008, Rodgers had less money in the 2225 Account than that which he was supposed to be holding on behalf of clients though his trust account did not show a negative balance;
- e. On 16 October 2008, Rodgers transferred \$20,000 from the 2225 Account to his operating account without identifying the client on whose behalf this transfer was made; Rodgers was unable to explain this withdrawal or to show that he was entitled to these funds;
- f. On 17 October 2008, Rodgers transferred \$5,000 from the 2225 Account to his operating account without identifying the client on whose behalf this transfer was made; Rodgers was unable to explain this withdrawal or to show that he was entitled to these funds;
- g. From 16 October 2008 through 16 April 2009, Rodgers had less money in the 2225 Account than that which he was supposed to be holding on behalf of clients, and on 21 October 2008 Rodgers' 2225 Account had a negative balance.
- 6. The State Bar's analysis shows that Rodgers mishandled entrusted client funds in the 1778 Account in that:
  - a. From 26 March 2009 through 31 March 2009, Rodgers had less money in the 1778 Account than that which he was supposed to be holding on behalf of clients though his trust account did not show a negative balance.
- 7. The foregoing facts establish that funds held in trust by Rodgers have been mishandled in violation of Rule 1.15-2 of the Revised Rules Professional Conduct.
  - 8. Rodgers desires to cooperate with the State Bar.
- 9. A need for prompt action exists to ensure that additional client funds entrusted to Rodgers are not mishandled to the client's detriment.

## Based upon the foregoing findings, the Court makes the following:

## CONCLUSIONS OF LAW

- 1. Prompt action, pursuant to N.C. Gen. Stat. § 84-28(f), is necessary to preserve the status quo while the State Bar continues its analysis of Rodgers' trust and operating accounts and to ensure that no client funds are mishandled.
- 2. Rodgers should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from withdrawing funds from and/or writing checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent over whom Rodgers exercises control to withdraw funds from and/or draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this order.
- 3. To assist the State Bar's analysis of his trust and operating accounts, Rodgers should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited.
- 4. Rodgers should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact until further order of this Court.

## THEREFORE, IT IS HEREBY ORDERED:

- 1. J. Neal Rodgers is enjoined from accepting or receiving any funds from or on behalf of clients or other individuals in a fiduciary capacity; from writing checks against or otherwise disbursing or withdrawing funds from any account in which client or fiduciary funds have been deposited; and/or directing or permitting any employee or agent over whom Rodgers exercises control to draw a check on or otherwise disburse or withdraw funds from any account in which client or fiduciary funds have been deposited until and unless expressly permitted to do so by subsequent orders of this Court. This does not prohibit an independent attorney with an active North Carolina law license over whom Rodgers does not exercise control from handling entrusted funds on behalf of Rodgers' clients.
- 2. Rodgers, or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall immediately produce to the State Bar for inspection and copying all of Rodgers' financial records relating to any account into which any trust or fiduciary funds have been deposited, including but not limited to bank statements, canceled checks, deposit slips, identification of deposited items, client ledger sheets, check stubs, debit memos and any other records relating to the receipt and disbursement of client or fiduciary funds.

- 3. Rodgers or any other person having custody or control over records relating to persons or entities for which he has provided legal services shall produce to the North Carolina State Bar for inspection and copying all records and documents relating to each such person or entity including but not limited to client files, billing statements, memoranda and receipts. Documents relating to current clients shall be produced within 24 hours of demand by the State Bar. Documents relating to closed client files shall be produced within 3 days of demand by the State Bar.
- 4. If Rodgers does not have possession of the minimum records regarding trust and fiduciary funds required to be maintained pursuant to Rule 1.15-3 of the Rules of Professional Conduct, he shall direct the bank(s) where his bank accounts(s) are maintained, within ten (10) days of the date of this order, to copy and transmit any such missing records directly to the State Bar at Rodgers' expense.
- 5. Rodgers shall not serve in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact, until and unless he is permitted to so by further order of this Court.
- 6. This Consent Order of Preliminary Injunction shall remain in effect until further order of this Court.

THIS the day of January, 2011.

Wake County Superior Court Judge

WE CONSENT:

Neal Rodgers, Respondent

Alan M. Schneider

Counsel for Respondent

Leanor Bailey Hodge

Deputy Counsel

The North Carolina State Bar